

REVISED MINUTES HEARING OFFICER April 21, 2015

Minutes of the regular public hearing of the Hearing Officer, of the City of Tempe, which was held at the Council Chambers, 31 East Fifth Street, Tempe, Arizona. **Revision to Item No. 10 (Page 7), Condition of Approval #4.**

Present:

Vanessa MacDonald, Hearing Officer
Steve Abrahamson, Planning & Zoning Coordinator
Sherri Lesser, Senior Planner
Karen Stovall, Senior Planner
Dean Miller, Senior Code Inspector
Michael Glab, Code Inspector
Jack Scofield, Code Inspector
Amy Wozniak, Code Inspector
Steve Nagy, Administrative Assistant II

Number of Interested Citizens Present: 25

Meeting convened at 1:42 PM and was called to order by Ms. MacDonald. She noted that anyone wishing to appeal a decision made by the Hearing Officer would need to file a written appeal to that decision within fourteen (14) days, by MAY 19, 2015 at 3:00 PM, to the Community Development Department.

Before hearing the cases, Ms. MacDonald noted that items #3, and #5 had been brought into compliance, and item #6 will be continued to the May 5, 2015 Hearing Officer.

1. Ms. MacDonald noted that the Hearing Officer Minutes for April 7, 2015 had been reviewed, and approved.

2. Request approval to abate public nuisance items at the **SALAZAR PROPERTY (PL150083)**, located at 1521 East Bell De Mar Drive. The applicant is the City of Tempe.

Jack Scofield requested approval of a 180 day open abatement of the property located at 1521 East Bell De Mar Drive. Notices have been sent to the owner of the property with no response. The owner has made some progress in cleaning up the property but the violation still exists. There has been no public comment on the case.

Ms. MacDonald stated she was going to approve the property abatement.

DECISION:

Ms. MacDonald approved abatement proceedings for PL150083

4. Request approval to abate public nuisance items at the **SENESE PROPERTY (PL150101)**, located at 1829 East Alameda Drive. The applicant is the City of Tempe.

Michael Glad requested approval of an abatement of the property located at 1829 East Alameda Drive, to remove an inoperable vehicle. Notices have been sent to the owner of the property with no response. There has been no public comment on the case.

Ms. MacDonald stated she was going to approve the property abatement.

DECISION:

Ms. MacDonald approved abatement proceedings for PL150101

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8. Request for variances to reduce the front yard setback from 15' to 10', a variance to reduce the on-site driveway length from 15' to 10', and a variance to reduce the front yard open structure setback from 15' to 10' for the **FAITH RESIDENCE (PL140290)**, located at 1319 South Ash Avenue. The applicant is Tessa Jones, The Phactory.

Sherri Lesser presented by reviewing the history of the project, addressing the incorrect dimension discovered on the project, and noting that the applicant was attempting to correct it.

With no questions of staff, Ms. MacDonald called up the applicant.

Tessa Jones, presented the case by reviewing the correction they were making by bringing the case before the Hearing Officer again. Ms. Jones also acknowledged that she agreed with the conditions.

With no one from the public wishing to speak on the case, Ms. MacDonald noted that this request meets the criteria for a Variance:

- A variance may not be granted if the special circumstances applicable to the property are self-imposed by the property owner
- The adjustment authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located
- The strict application of this Code will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district
- That special circumstances are applicable to the property, including its size, shape, topography, location, or surroundings

DECISION:

Ms. MacDonald approved PL140290/ VAR15004/VAR15005/VAR15007 subject to the assigned Conditions of Approval:

1. The variance is valid for the plans as submitted within this application.
2. This variances and are valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
3. The Variances are valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process. The setback may not be reduced further without seeking another variance.

4. The materials and colors of the addition shall match or be compatible with the existing structure.

7. Request for a Use Permit to establish a crematorium in the GID zoning district for **NEPTUNE SOCIETY (PL150063)**, located at 1634 South Priest Drive. The applicant is Tim Nicholson with Neptune Management Corporation.

Dean Miller Presented the case by reviewing the location, zoning and Use Permit details.

Ms. MacDonald clarified that the applicant was only applying for the Use Permit to set up a consulting office, and that no cremation services would be conducted on site. Mr. Miller confirmed this.

Ms. MacDonald then called up the appliance, Kurt Connors. Mr. Connors added that the Use Permit description was not totally accurate, as the site would only be used as a sales office. He re-confirmed that cremation and other associated services would not be held at this location. He then further explained what they intended to use the site for.

Mc. MacDonald then opened the Hearing to Public comment.

1. David Skilton, Tempe, requested that a condition be added to ensure corpses not be brought in and out of location.

Ms. MacDonald addressed his concern by explaining that the Use Permit would not allow such.

She then called the applicant back up, and reviewed the revised stipulations with him. Mr. Conner s agreed with the conditions.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- Any significant increase in vehicular or pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals, objectives, or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- Compatibility with existing surrounding structures and uses.
- Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:

Ms. MacDonald approved PL150063/ ZUP15023 subject to the assigned Conditions of Approval:

CONDITION(S) OF APPROVAL:

1. This Use Permit is valid only after a Building Permit has been obtained and the required inspections have been completed and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. The suite shall be used as a sales office only. No human corpses shall ever be present at this location. No funeral activity or memorial services shall occur at this location.
5. Any intensification or expansion of use shall require a new Use Permit.

9. Request for two Use Permits to allow a bar and entertainment for **PEDAL HAUS (PL150034)**, located at 730 South Mill Avenue #H102 and #H104. The applicant is Tomecak Design.

Karen Stovall presented the case by reviewing the location, zoning and Use Permit details for both requests, and recommended approval.

Ms. MacDonald then called up the appliance, Julian Wright, Tempe. Mr. Wright added that he understood the challenges of living in a vibrant urban environment. He then presented the project elevations which showed how the outdoor patio was designed to deflect noise away from the residences at W6. He further explained the intentions for the use of the business.

Ms. MacDonald discussed the stipulations with Mr. Wright. He explained that he agreed with the stipulations, including those that were put in place to restrict the noise from music at the venue. Ms. MacDonald also asked if Mr. Wright would agree to return to the Hearing Officer in 6 months for review of the Use Permits. Mr. Wright agreed that he would be willing to do so.

With no other questions of the applicant, Ms. MacDonald opened the Hearing to public comment.

1. Charles Huellmantel, Tempe, expressed support for the project.
2. Andrew McIlhane, Tempe, expressed opposition over concerns of noise disrupting him.
3. Ozgur Celik, Tempe, expressed opposition over lack of notification and neighborhood meeting amongst W6 tenants, and concern of noise.

Ms. MacDonald asked for staff to clarify the notification process. Ms. Stovall explained notice is given to property owners. Tenants renting units in W6 would not have received notification.

4. Joan Tate, Chandler, expressed opposition over concern of noise.

Ms. MacDonald also received a public comment card in support of the project from Lauren Proper, who did not wish to speak at the Hearing.

With no one else from the public wishing to speak on the case, Ms. MacDonald closed the Public Comment portion of the Hearing, and called the applicant back up.

Mr. Wright addressed the concerns by reiterating that he used to live at W6, and could sympathize with the public concern. He went on to explain that he still believes he will be within noise ordinance limits, likely more so than other bars in the area. He went on to address the concerns expressed during the Public Comment section of the Hearing by explaining that he believes putting up with noise from a vibrant area is the sacrifice you make in living in the heart of that vibrant area.

Ms. MacDonald had no other questions of the applicant.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- Any significant increase in vehicular or pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.
- Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals, objectives, or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- Compatibility with existing surrounding structures and uses.
- Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:

Ms. MacDonald approved PL150034/ ZUP15025 / ZUP15026 subject to the assigned Conditions of Approval:

1. This Use Permit for entertainment is valid only after a Building Permit has been obtained, the required inspections have been completed, and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application.
3. This Use Permit is valid only for the following types of entertainment: recorded music by a DJ or from an acoustical instrument (e.g. guitar, violin, and saxophone).
4. Live amplified bands with drums are prohibited, unless authorized through a special event permit on a specified date.
5. Live entertainment shall begin no earlier than 11:00 am and end no later than 10:00 pm Sunday through Thursday, and no earlier than 11:00 am and end no later than 12:00 am on Friday and Saturday.
6. Amplified sound shall not exceed the maximum allowed decibel level for a Residential Zone, including ambient noise levels.
7. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
8. Any intensification or expansion of use, including other types of live entertainment, shall require a new Use Permit.
9. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before May 21, 2015.
10. The applicant shall return to the Hearing Officer for a six month review of compliance on October 19, 2015.

ZUP15026 CONDITIONS OF APPROVAL:

1. This Use Permit for a bar is valid only after a Building Permit has been obtained, the required inspections have been completed, and a Final Inspection has been passed.
2. The Use Permit is valid for the plans as submitted within this application. Any additions or modifications may be submitted for review during building plan check process.

3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Any intensification or expansion of use shall require a new Use Permit.
5. The applicant shall contact the City of Tempe Crime Prevention Unit for a security plan within 30 days of this approval. Contact 480-858-6409 before May 21, 2015.
6. The applicant shall return to the Hearing Officer for a six month review of compliance on October 19, 2015.

10. Request approval for a Use Permit to allow a new 65-foot high monopole and equipment shelter for **COUNTRYSIDE CELL TOWER (PL140480)**, located at 1730 East Warner Road. The applicant is ERIC Hochman, EJ Group, LLC.

Karen Stovall presented the case by reviewing the location, case history, public input she had received, and the site plans.

With no questions of staff, Ms. MacDonald called up the applicant. Eric Hochman, Miami, FL, presented the changes he had made to the cell tower and the cell tower location, lowering the height, and enhancing the design elements to look more like a palm in an effort to address the concerns of the neighbors.

With no questions of the applicant, Ms. MacDonald opened the Hearing to public comment.

1. Marty Starling, Tempe, expressed opposition over concerns to the impact of the view from her home.

Ms. MacDonald asked Ms. Starling if she had any idea why it would appear as though trees had been removed from the property directly behind her house. Ms. Starling replied that it was church property and the trees had died and been removed.

2. Bill Knopf, Tempe, expressed opposition over impact on view tower would cause.
3. Ron Starling, Tempe, expressed opposition over impact on view.
4. Deborah Houk, Tempe, expressed opposition over impact on views.
5. Dave Houk, Tempe, expressed opposition over impact on views.

With no other Public Comments, Ms. MacDonald closed that portion of the Hearing and called the applicant back up.

Mr. Hochman assured the Hearing Officer that the dimensions of the pole would meet the requirements. He addressed the concerns raised by the members of the public that spoke at the Hearing, and added that he would be happy to add landscaping. He also noted that he would be willing to consider other types of fronds to better camouflage the pole. He concluded by reiterating why the need for the additional pole in the area existed, which was to accommodate higher call volumes and new technologies.

Ms. MacDonald had no other questions of the applicant.

Ms. MacDonald noted that this request meets the criteria for a Use Permit:

- Any significant increase in vehicular or pedestrian traffic.
- Nuisance arising from the emission of odor, dust, gas, noise, vibration, smoke, heat or glare at a level exceeding that of ambient conditions.

- Contribution to the deterioration of the neighborhood or to the downgrading of property values, the proposed use is not in conflict with the goals, objectives, or policies for rehabilitation, redevelopment or conservation as set forth in the city's adopted plans or General Plan.
- Compatibility with existing surrounding structures and uses.
- Adequate control of disruptive behavior both inside and outside the premises which may create a nuisance to the surrounding area or general public.

DECISION:

Ms. MacDonald approved PL140480/ ZUP15014 subject to the assigned Conditions of Approval:

CONDITIONS OF APPROVAL:

1. This Use Permit is valid only after a Building Permit has been obtained, the required inspections have been completed, and a Final Inspection has been passed. As part of the Building Permit process, on-site storm water retention may be required to be verified or accomplished on this Site.
2. The Use Permit is valid for the plans as submitted within this application except as modified by conditions.
3. If there are any complaints arising from the Use Permit that are verified by a consensus of the complaining party and the City Attorney's office, the Use Permit will be reviewed by City staff to determine the need for a public hearing to re-evaluate the appropriateness of the Use Permit, which may result in termination of the Use Permit.
4. Prior to **issuance of building permits** ~~submittal of an application for a building permit~~, the applicant shall provide evidence to the Planning Division of a contractual agreement for a wireless provider to locate on the facility.
5. The monopalm shall have faux-bark cladding.
6. The top of the antennas shall be no higher than 60 feet.
7. The length of the antennas shall be no greater than 8 feet.
8. The T-arm to which the antenna sectors are mounted shall not extend from the pole for a distance greater than 2 feet.
9. The sector arms may not exceed a length of 9 feet and 6 inches (9'-6").
10. The monopalm shall be no greater than 65'-0" to top of fronds. This condition is intended to permit a structure that does not significantly exceed the height of other palm trees in the center and does not exceed the maximum height typically reached by real palm trees.
11. The landscape plan shall be modified to include a shade tree (minimum 1.5" caliper), a live Washingtonia robusta palm tree (minimum 25' high), groundcover plants, and irrigation in the landscape area north of the northern-most driveway off McClintock Drive. Specific plant locations shall be identified on the landscape plan submitted with construction documents.
12. The landscape plan shall be modified to show sight distance lines at driveways.

13. Include in the project data table the proposed square footage and percentage of on-site landscaping. A minimum of 15% is required.
14. The proposed equipment cabinet shall be constructed of similar material and color to match the existing buildings or shall be fully screened by solid screen walls and gates.
15. A weather resistant emergency contact information sign shall be posted on the site and shall be visible to the public.
16. Verify the number of existing parking spaces on the site and correct the site data table to note the removal of a total of four spaces. An updated parking analysis shall be submitted to the Planning Division prior to construction plan submittal.

The next Hearing Officer public hearing will be held on April 21, 2015.

Steve Abrahamson announced that the June 16 Hearing Officer was being moved to June 17. With no further business, the public hearing adjourned at 2:06 PM.

Prepared by: Steve Nagy, Administrative Assistant II
Reviewed by:

A handwritten signature in blue ink that reads "Steve Abrahamson".

Steve Abrahamson, Planning & Zoning Coordinator
for Vanessa MacDonald, Hearing Officer

SA:SN